

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1477

AN ACT

AMENDING SECTIONS 16-449, 16-602 AND 16-663, ARIZONA REVISED STATUTES;
RELATING TO CONDUCT OF ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-449, Arizona Revised Statutes, is amended to
3 read:

4 16-449. Required test of equipment and programs: notice:
5 procedures manual: list of equipment tested

6 A. Within the period of time before the election day prescribed by the
7 secretary of state in the instructions and procedures manual adopted pursuant
8 to section 16-452, the board of supervisors or other election officer in
9 charge, or for an election involving state or federal candidates, the
10 secretary of state, shall have the automatic tabulating equipment and
11 programs tested to ascertain that the equipment and programs will correctly
12 count the votes cast for all offices and on all measures AND SHALL VERIFY
13 THAT ALL SOFTWARE AND FIRMWARE USED IN THE EQUIPMENT AND SYSTEM ARE VERSIONS
14 CERTIFIED FOR USE BY THE SECRETARY OF STATE. Public notice of the time and
15 place of the test shall be given at least forty-eight hours prior thereto by
16 publication once in one or more daily or weekly newspapers published in the
17 town, city or village using such equipment, if a newspaper is published
18 therein, otherwise in a newspaper of general circulation therein. The test
19 shall be observed by at least two election inspectors, who shall not be of
20 the same political party, and shall be open to representatives of the
21 political parties, candidates, the press and the public. The test shall be
22 conducted by processing a preaudited group of ballots so punched or marked as
23 to record a predetermined number of valid votes for each candidate and on
24 each measure and shall include for each office one or more ballots which have
25 votes in excess of the number allowed by law in order to test the ability of
26 the automatic tabulating equipment and programs to reject such votes. PARTY
27 REPRESENTATIVES MAY CONDUCT THEIR OWN TESTING USING BALLOTS MARKED BY THE
28 PARTY REPRESENTATIVES. EACH PARTY ENTITLED TO CONTINUED REPRESENTATION ON
29 THE BALLOT THAT CHOOSES TO CONDUCT ITS OWN TESTING SHALL HAVE THE COUNTY
30 PARTY CHAIRPERSON NOTIFY, IN WRITING, THE COUNTY OFFICER IN CHARGE OF
31 ELECTIONS, NOT LATER THAN THIRTY DAYS BEFORE THE ELECTION, THE NAMES OF THE
32 PARTY REPRESENTATIVES WHO WILL CONDUCT THE TESTING. THE COUNTY OFFICER IN
33 CHARGE OF ELECTIONS MAY REFUSE, OR REMOVE FOR CAUSE, THE DESIGNEE OF THE
34 PARTY CHAIR AND SHALL NOTIFY THE PARTY CHAIR OF THE REFUSAL AS SOON AS IS
35 PRACTICABLE SO THAT THE PARTY CAN DESIGNATE AN ALTERNATE. EACH PARTY
36 ENTITLED TO CONTINUED REPRESENTATION ON THE BALLOT THAT CHOOSES TO CONDUCT
37 ITS OWN TESTING SHALL RECEIVE ONE TEST DECK OF BALLOTS. A TEST DECK SHALL, AS
38 SELECTED AND REQUESTED BY THE PARTY REPRESENTATIVE, CONSIST OF NOT MORE THAN
39 TWO BALLOTS FROM EVERY PRECINCT AND UP TO TEN BALLOTS PER PRECINCT FROM UP TO
40 TEN PER CENT OF THE PRECINCTS OR SEVENTY-FIVE PRECINCTS, WHICHEVER IS LESS,
41 IN THAT COUNTY. IN THE CASE OF A PRIMARY ELECTION, A PARTY MAY ONLY TEST
42 BALLOTS FROM ITS PARTY. BALLOTS THAT ARE USED AS PART OF A TEST DECK SHALL
43 BE DISTINGUISHABLE FROM ALL OTHER TYPES OF BALLOTS BY INCLUDING THE WORD
44 "TEST" OR A SIMILAR LABEL IN A CONSPICUOUS PLACE ON THE BALLOT. AT LEAST

1 FOUR PRECINCTS ARE SUBJECT TO TESTING IF THERE ARE LESS THAN FORTY PRECINCTS
2 IN THE JURISDICTION. PRECINCTS TO BE TESTED SHALL BE SELECTED BY THE PARTY
3 REPRESENTATIVES AND ALL BALLOTS REQUESTED BY THE PARTY REPRESENTATIVES SHALL
4 BE TESTED. TESTING BY THE PARTY REPRESENTATIVES SHALL BE COMPLETED ON A
5 SCHEDULE AGREED ON BY THE PARTY REPRESENTATIVES AND THE OFFICER IN CHARGE OF
6 ELECTIONS. IF A SCHEDULE CANNOT BE AGREED ON, TESTING SHALL BE COMPLETED
7 BEFORE THE OFFICIAL LOGIC AND ACCURACY TEST. THE ELECTION SCHEDULE,
8 INCLUDING THE LOGIC AND ACCURACY TESTING, SHALL NOT BE MODIFIED TO
9 ACCOMMODATE PARTY TESTING. ALL MARKING AND TESTING OF BALLOTS BY PARTY
10 REPRESENTATIVES SHALL OCCUR AT THE ELECTION DEPARTMENT. PARTY
11 REPRESENTATIVES MAY USE THEIR TEST BALLOTS TO TEST THE PAPER-FED OPTICAL SCAN
12 MACHINES, INCLUDING THE CENTRAL COUNT SCANNERS, OR THE DIRECT RECORDING
13 ELECTRONIC VOTING SYSTEMS, OR BOTH. THE SAME BALLOT MAY BE USED TO TEST BOTH
14 DEVICES. FOR TESTING THE DIRECT RECORDING SYSTEMS, THE TEST BALLOT SHALL
15 SERVE AS A TEMPLATE FOR MANUAL ENTRY OF BALLOT CONTENT. THE ENTIRE TEST MAY
16 BE REPEATED USING THE SAME TEST DECK AFTER THE LAST OFFICIAL BALLOT IS
17 TABULATED, BUT BEFORE THE CANVASS IS APPROVED. If any error is detected, the
18 cause therefor shall be ascertained and corrected and an errorless count
19 shall be made before the automatic tabulating equipment and programs are
20 approved. A copy of a revised program shall be filed with the secretary of
21 state within forty-eight hours after the revision is made. If the error was
22 created by automatic tabulating equipment malfunction, a report shall be
23 filed with the secretary of state within forty-eight hours after the
24 correction is made, stating the cause and the corrective action taken. The
25 test shall be repeated immediately before the start of the official count of
26 the ballots in the same manner as set forth above. After the completion of
27 the count, the programs used and the ballots shall be sealed, retained and
28 disposed of as provided for paper ballots.

29 B. Electronic ballot tabulating systems shall be tested for logic and
30 accuracy within seven days before their use for early balloting pursuant to
31 the instructions and procedures manual for electronic voting systems that is
32 adopted by the secretary of state as prescribed by section 16-452. The
33 instructions and procedures manual shall include procedures for the handling
34 of ballots, the electronic scanning of ballots and any other matters
35 necessary to ensure the maximum degree of correctness, impartiality and
36 uniformity in the administration of an electronic ballot tabulating system.

37 C. THE SECRETARY OF STATE OR OFFICER IN CHARGE OF ELECTIONS, AS
38 APPLICABLE, SHALL PRODUCE AND RETAIN AN AUDIT LOG AND DIRECTORY LISTINGS FOR
39 EQUIPMENT TESTED.

1 Sec. 2. Section 16-602, Arizona Revised Statutes, is amended to read:

2 16-602. Removal of ballots from ballot boxes; disposition of
3 ballots folded together or excessive ballots;
4 designated margin; hand counts; vote count
5 verification committee

6 A. The ballots cast in the election shall first be removed from the
7 ballot box and counted without being opened, except as may be necessary to
8 ascertain that the number of ballots cast corresponds with the number of
9 names on the poll lists.

10 B. If two or more ballots are found folded together appearing as a
11 single ballot, they shall be laid aside until the count of the ballots is
12 completed. If it then appears by comparison of the count with the number of
13 names on the poll lists that the ballots thus folded together were cast by
14 one elector, they shall be destroyed. If the ballots in the box are still
15 found to exceed in number the names on the poll lists, the ballots, except
16 those destroyed, shall be replaced in the box, and one of the judges, without
17 looking in the box, shall draw therefrom, one at a time, and destroy
18 unopened, a number of ballots equal to the excess, and the election board
19 shall record on the poll lists the number of ballots so destroyed and shall
20 then sign the poll list.

21 C. For each countywide primary, general and presidential preference
22 election, the county officer in charge of the election shall conduct a hand
23 count at the central counting center in the following order:

24 1. At least two per cent of the precincts in that county, or two
25 precincts, whichever is greater, shall be selected at random from a pool
26 consisting of every precinct in that county. The county political party
27 chairman for each political party that is entitled to continued
28 representation on the state ballot or the chairman's designee shall conduct
29 the selection of the precincts to be hand counted. The precincts shall be
30 selected by lot without the use of a computer, and the order of selection by
31 the county political party chairmen shall also be by lot. The selection of
32 the precincts shall not begin until all ballots voted in the precinct polling
33 places have been delivered to the central counting center. The unofficial
34 vote totals from all precincts shall be made public before selecting the
35 precincts to be hand counted. Only the ballots cast in the polling places
36 and ballots from direct recording electronic machines shall be included in
37 the hand counts conducted pursuant to this section. Provisional ballots,
38 conditional provisional ballots and write-in votes shall not be included in
39 the hand counts and the early ballots shall be grouped separately by the
40 officer in charge of elections for purposes of a separate manual audit
41 pursuant to subsection G of this section.

1 2. The races to be counted on the ballots from the precincts that were
2 selected pursuant to paragraph 1 of this subsection for each primary and
3 general election shall include up to five contested races. After the county
4 recorder or other officer in charge of elections separates the primary
5 ballots by political party, the races to be counted shall be determined by
6 selecting by lot without the use of a computer from those ballots as follows:

7 (a) For a general election, one statewide ballot measure, unless there
8 are no measures on the ballot.

9 (b) One contested statewide race for statewide office.

10 (c) One contested race for federal office, either United States senate
11 or United States house of representatives. If the United States house of
12 representatives race is selected, the names of the candidates may vary among
13 the sampled precincts.

14 (d) One contested race for state legislative office, either state
15 house of representatives or state senate. In either case, the names of the
16 candidates may vary among the sampled precincts.

17 (e) If there are fewer than four contested races resulting from the
18 selections made pursuant to subdivisions (a) through (d) and if there are
19 additional contested federal, statewide or legislative races or ballot
20 measures, additional contested races shall be selected by lot not using a
21 computer until four races have been selected or until no additional contested
22 federal, statewide or legislative races or ballot measures are available for
23 selection.

24 (f) If there are no contested races as prescribed by this paragraph, a
25 hand count shall not be conducted for that precinct for that election.

26 3. For the presidential preference election, select by lot two per
27 cent of the polling places designated and used pursuant to section 16-248 and
28 perform the hand count of those ballots.

29 4. For the purposes of this section, a write-in candidacy in a race
30 does not constitute a contested race.

31 5. In elections in which there are candidates for president, the
32 presidential race shall be added to the four categories of hand counted
33 races.

34 6. Each county chairman of a political party that is entitled to
35 continued representation on the state ballot or the chairman's designee shall
36 select by lot the individual races to be hand counted pursuant to this
37 section.

38 7. The county chairman of each political party shall designate and
39 provide the number of election board members as designated by the county
40 officer in charge of elections who shall perform the hand count under the
41 supervision of the county officer in charge of elections. For each precinct
42 that is to be audited, the county chairmen shall designate at least two board
43 workers who are registered members of any or no political party to assist
44 with the audit. Any qualified elector from this state may be a board worker

1 without regard to party designation. The county election officer shall
2 provide for compensation for those board workers, not to include travel, meal
3 or lodging expenses. If there are less than two persons for each audited
4 precinct available to participate on behalf of each recognized political
5 party, the recorder or officer in charge of elections, with the approval of
6 at least two county party chairpersons in the county in which the shortfall
7 occurs, shall substitute additional individual electors who are provided by
8 any political party from anywhere in the state without regard to party
9 designation to conduct the hand count. A county party chairman shall approve
10 only those substitute electors who are provided by the county chairman's
11 political party. The political parties shall provide to the recorder or
12 officer in charge of elections in writing the names of those persons
13 intending to participate in the hand count at the audited precincts not later
14 than 5:00 p.m. on the Tuesday preceding the election. If the total number of
15 board workers provided by all parties is less than four times the number of
16 precincts to be audited, the recorder or officer in charge of elections shall
17 notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding
18 the election. The hand count shall not proceed unless the political parties
19 provide the recorder or officer in charge of elections, in writing, a
20 sufficient number of persons by 5:00 p.m. on the Thursday preceding the
21 election and a sufficient number of persons, ~~pursuant to section 16-602,~~
22 ~~subsection C,~~ THIS paragraph 7, arrive to perform the hand count. The
23 recorder or officer in charge of elections may prohibit persons from
24 participating in the hand count if they are taking actions to disrupt the
25 count or are unable to perform the duties as assigned. For the hand count to
26 proceed, no more than seventy-five per cent of the persons performing the
27 hand count shall be from the same political party.

28 8. If a political party is not represented by a designated chairperson
29 within a county, then the state chairperson for that political party, or a
30 person designated by the state chairperson, may perform the actions required
31 by the county chairperson as specified in this section.

32 D. If the randomly selected races result in a difference in any race
33 that is less than the designated margin when compared to the electronic
34 tabulation of those same ballots, the results of the electronic tabulation
35 constitute the official count for that race. If the randomly selected races
36 result in a difference in any race that is equal to or greater than the
37 designated margin when compared to the electronic tabulation of those same
38 ballots, a second hand count of those same ballots and races shall be
39 performed. If the second hand count results in a difference in any race that
40 is less than the designated margin when compared to the electronic tabulation
41 for those same ballots, the electronic tabulation constitutes the official
42 count for that race. If the second hand count results in a difference in any
43 race that is equal to or greater than the designated margin when compared to
44 the electronic tabulation for those same ballots, the hand count shall be

1 expanded to include a total of twice the original number of randomly selected
2 precincts. THE EXPANDED HAND COUNT SHALL INCLUDE THE BALLOTS FROM THE
3 ORIGINAL HAND COUNT TOGETHER WITH THE BALLOTS FROM THE ADDITIONAL PRECINCTS.
4 Those additional precincts shall be selected by lot without the use of a
5 computer.

6 E. In any expanded count of randomly selected precincts, if the
7 randomly selected precinct hand counts result in a difference in any race
8 that is equal to or greater than the designated margin when compared to the
9 electronic tabulation of those same ballots, the final hand count shall be
10 extended to include the entire jurisdiction for that race. If the
11 jurisdictional boundary for that race would include any portion of more than
12 one county, the final hand count shall not be extended into the precincts of
13 that race that are outside of the county that is conducting the expanded hand
14 count. If the expanded hand count results in a difference in that race that
15 is less than the designated margin when compared to the electronic tabulation
16 of those same ballots, the electronic tabulation constitutes the official
17 count for that race.

18 F. If a final hand count is performed for an entire jurisdiction for a
19 race, the final hand count shall be repeated for that race until a hand count
20 for that race for the entire jurisdiction results in a count that is
21 identical to one other hand count for that race for the entire jurisdiction
22 and that hand count constitutes the official count for that race.

23 G. ~~After~~ DURING the electronic tabulation of early ballots and at one
24 or more times selected by the chairman of the political parties entitled to
25 continued representation on the ballot or the chairman's designee, the
26 chairmen or the chairmen's designees shall randomly select one or more
27 batches of early ballots ~~that have been~~ TO BE tabulated to include at least
28 one batch from each machine used for tabulating early ballots and those
29 ballots shall be securely sequestered AFTER TABULATION by the county recorder
30 or officer in charge of elections along with their unofficial tally reports
31 for a postelection manual audit. The chairmen or the chairmen's designees
32 shall randomly select from those sequestered early ballots a number equal to
33 ~~one~~ TWO per cent of the total number of early ballots cast or ~~five~~ TEN
34 thousand early ballots, whichever is less. From those randomly selected
35 early ballots, the county officer in charge of elections shall conduct a
36 manual audit of the same races that are being hand counted pursuant to
37 subsection C of this section. If the manual audit of the early ballots
38 results in a difference in any race that is equal to or greater than the
39 designated margin when compared to the electronically tabulated results for
40 those same early ballots, the manual audit shall be repeated for those same
41 early ballots. If the second manual audit results in a difference in that
42 race that is equal to or greater than the designated margin when compared to
43 the electronically tabulated results for those same early ballots, the manual
44 audit shall be expanded only for that race to a number of additional early

1 ballots equal to ~~one per cent of the total early ballots cast or an~~
2 ~~additional five thousand ballots, whichever is less~~ OR GREATER THAN THE
3 NUMBER USED IN THE FIRST HAND COUNT, to be randomly selected from the batch
4 or batches of sequestered early ballots. THE EXPANDED AUDIT SHALL INCLUDE
5 THE BALLOTS USED IN THE ORIGINAL HAND COUNT TOGETHER WITH THE ADDITIONAL
6 BALLOTS. If the expanded early ballot manual audit results in a difference
7 for that race that is equal to or greater than the designated margin, ~~when~~
8 ~~compared to any of the earlier manual counts for that race, the manual counts~~
9 ~~shall be repeated for that race until a manual count results in a difference~~
10 ~~in that race that is less than the designated margin. If at any point in the~~
11 ~~manual audit of early ballots the difference between any manual count of~~
12 ~~early ballots is less than the designated margin when compared to the~~
13 ~~electronic tabulation of those ballots, the electronic tabulation shall be~~
14 ~~included in the canvass and no further manual audit of the early ballots~~
15 ~~shall be conducted~~ THE FINAL HAND COUNT SHALL BE EXTENDED TO INCLUDE THE
16 ENTIRE JURISDICTION FOR THAT RACE. IF THE JURISDICTIONAL BOUNDARY FOR THAT
17 RACE WOULD INCLUDE ANY PORTION OF MORE THAN ONE COUNTY, THE FINAL HAND COUNT
18 SHALL NOT BE EXTENDED INTO THE PRECINCTS OF THAT RACE THAT ARE OUTSIDE OF THE
19 COUNTY THAT IS CONDUCTING THE EXPANDED HAND COUNT. IF THE EXPANDED HAND
20 COUNT RESULTS IN A DIFFERENCE IN THAT RACE THAT IS LESS THAN THE DESIGNATED
21 MARGIN WHEN COMPARED TO THE ELECTRONIC TABULATION OF THOSE SAME BALLOTS, THE
22 ELECTRONIC TABULATION CONSTITUTES THE OFFICIAL COUNT FOR THAT RACE.

23 H. During any hand count of early ballots, the county officer in
24 charge of elections and election board workers shall attempt to determine the
25 intent of the voter in casting the ballot.

26 I. Notwithstanding any other law, the county officer in charge of
27 elections shall retain custody of the ballots for purposes of performing any
28 required hand counts and the officer shall provide for security for those
29 ballots.

30 J. The hand counts prescribed by this section shall begin within
31 twenty-four hours after the closing of the polls and shall be completed
32 before the canvassing of the election for that county. The results of those
33 hand counts shall be provided to the secretary of state, who shall make those
34 results publicly available on the secretary of state's web site.

35 K. For any county in which a hand count has been expanded to all
36 precincts in the jurisdiction, the secretary of state shall make available
37 the escrowed source code for that county to the superior court. The superior
38 court shall appoint a special master to review the computer software. The
39 special master shall have expertise in software engineering and shall not be
40 affiliated with an election software vendor nor with a candidate and shall
41 sign and be bound by a nondisclosure agreement regarding the source code
42 itself, and shall issue a public report to the court and to the secretary of
43 state regarding the special master's findings on the reasons for the
44 discrepancies. The secretary of state shall consider the reports for

1 purposes of reviewing the certification of that equipment and software for
2 use in this state.

3 L. The vote count verification committee is established in the office
4 of the secretary of state and all of the following apply:

5 1. At least thirty days before the 2006 primary election, the
6 secretary of state shall appoint seven persons to the committee, no more than
7 three of whom are members of the same political party.

8 2. Members of the committee shall have expertise in any two or more of
9 the areas of advanced mathematics, statistics, random selection methods,
10 systems operations or voting systems.

11 3. A person is not eligible to be a committee member if that person
12 has been affiliated with or received any income in the preceding five years
13 from any person or entity that provides election equipment or services in
14 this state.

15 4. The vote count verification committee shall meet and establish one
16 or more designated margins to be used in reviewing the hand counting of votes
17 as required pursuant to this section. The committee shall review and
18 consider revising the designated margins every two years for use in the
19 applicable elections. The committee shall provide the designated margins to
20 the secretary of state at least ten days before the primary election and at
21 least ten days before the general election, and the secretary of state shall
22 make that information publicly available on the secretary of state's web
23 site.

24 5. Members of the vote count verification committee are not eligible
25 to receive compensation but are eligible for reimbursement of expenses
26 pursuant to title 38, chapter 4, article 2. The committee is a public body
27 and its meetings are subject to title 38, chapter 3, article 3.1 and its
28 reports and records are subject to title 39, chapter 1.

29 Sec. 3. Section 16-663, Arizona Revised Statutes, is amended to read:

30 16-663. Recount of votes; method

31 A. The superior court to which the facts requiring a recount are
32 certified shall forthwith make and enter an order requiring a recount of the
33 votes cast for such office, measure or proposal. The recount shall be
34 conducted in accordance with the laws pertaining to contests of elections.

35 B. When the court orders a recount of votes which were cast and
36 tabulated on electronic voting equipment, such recount shall be pursuant to
37 section 16-664. On completion of the recount, and for legislative, statewide
38 and federal candidate races only, the county chairmen of the political
39 parties entitled to continued representation on the ballot or the chairman's
40 designee shall select at random without the use of a computer five per cent
41 of the precincts for the recounted race for a hand count. ~~and~~ IN ADDITION,
42 FIVE PER CENT OF THE EARLY BALLOTS FOR THE RECOUNTED RACE, SELECTED RANDOMLY,
43 SHALL BE HAND COUNTED USING THE BATCH METHOD ESTABLISHED IN SECTION 16-602,
44 SUBSECTION G. THE TOTALS FOR EARLY BALLOTS AND PRECINCT BALLOTS SHALL BE

1 RECORDED SEPARATELY BUT SHALL BE COMBINED WHEN CALCULATING THE FINAL
2 DIFFERENCE BETWEEN THE ELECTRONIC TABULATION AND THE HAND COUNT. If the
3 results of that hand count when compared to the electronic tabulation of that
4 same race are less than the designated margins calculated pursuant to section
5 16-602, the recount is complete and the electronic tabulation is the official
6 result. If the hand count results in a difference that is equal to or
7 greater than the designated margin for that race, the procedure established
8 in section 16-602, subsections D, E, F and G applies.